

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

DISTRICT OF COLUMBIA,  
a municipal corporation,  
441 4<sup>th</sup> Street, N.W.  
Washington, DC 20001

Plaintiff,

v.

PHILIP MORRIS USA, INC.,  
a Virginia corporation,  
6601 West Broad Street  
Richmond, VA 23230

R.J. REYNOLDS TOBACCO COMPANY,  
a North Carolina corporation,  
401 N. Main Street  
Winston-Salem, NC 27101

LORILLARD TOBACCO COMPANY,  
a Delaware corporation,  
714 Green Valley Road  
Greensboro, NC 27408

COMMONWEALTH BRANDS, INC.,  
a Kentucky corporation,  
900 Church Street  
Bowling Green, KY 42101

JAPAN TOBACCO INTERNATIONAL  
U.S.A., INC.,  
a California corporation,  
910 Sylvan Avenue  
Englewood Cliffs, NJ 07632

KING MAKER MARKETING, INC.,  
a New York corporation,  
12 Route 17 North, Suite 304  
Paramus, NJ 07652

Case No.:

**COMPLAINT FOR  
DECLARATORY AND  
EQUITABLE RELIEF  
PURSUANT TO  
MASTER SETTLEMENT  
AGREEMENT**

KRETEK INTERNATIONAL, INC.,	)
a California corporation,	)
5449 Endeavor Court	)
Moorpark, CA 93021	)
	)
LIBERTY BRANDS, LLC,	)
a Delaware limited liability company,	)
9301 Old Staples Mill Rd.	)
Richmond, VA 23228	)
	)
LIGGETT GROUP, INC.,	)
a Delaware corporation,	)
100 Maple Lane	)
Mebane, NC 27302	)
	)
SHERMAN'S 1400 BROADWAY NYC,	)
LTD.,	)
2200 Fletcher Avenue	)
Fort Lee, NJ 07024	)
	)
TOP TOBACCO, L.P.,	)
2301 Ravine Way	)
Glenview, IL 60025	)
	)
VIBO CORPORATION D/B/A GENERAL	)
TOBACCO,	)
a Florida corporation,	)
2980 NW 108 <sup>th</sup> Avenue	)
Miami, FL 33172	)
	)
Defendants.	)
	)

Plaintiff District of Columbia (“the District”), through its Attorney General, files this Complaint for declaratory and equitable relief in order to resolve a dispute that has arisen between the District and the Defendants under a settlement agreement (“Master Settlement Agreement” or “Agreement”) that 46 states, the District, and five United States territories (“Settling States”) reached with several dozen cigarette and “roll-your-own” tobacco manufacturers (“cigarette manufacturers”). The District seeks a

determination by the Court that, during the entire calendar year 2003, the District “diligently enforced” the provisions of the Tobacco Settlement Model Act of 2000, D.C. Code §§ 7-1801.01 & 7-1801.02 (2001). Under the terms of the Master Settlement Agreement, such a determination will protect the District’s right to receive settlement payments based on the Defendants’ sales of cigarettes during 2003. The District also requests that the Court, if necessary, enforce the Defendants’ payment obligations under the Agreement, consistent with the Court’s diligent-enforcement determination.

### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to D.C. Code § 11-921 (2001) and personal jurisdiction over the Defendants pursuant to D.C. Code § 13-423 (2001). The District and each of the Defendants are parties to the Master Settlement Agreement, which provides that this Court (i) has jurisdiction over each Defendant; (ii) has “exclusive jurisdiction for the purposes of implementing and enforcing” the Agreement as to the District, and (iii) is to be, with certain exceptions not applicable to this action, “the only court to which disputes under this Agreement [as to the District] are presented.” [Master Settlement Agreement § VII(a)]

### **PARTIES**

2. The District, a municipal corporation established by the United States Congress and empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. It has been a party to the Master Settlement Agreement since November 1998.

3. Defendant Philip Morris USA, Inc., formerly known as Philip Morris Incorporated, is a Virginia corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since November 1998.
4. Defendant R.J. Reynolds Tobacco Company is a North Carolina corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since November 1998. In 2003, it merged with, and succeeded to the Master Settlement Agreement rights and obligations of, Brown & Williamson Tobacco Corporation, a cigarette manufacturer that had been a party to the Master Settlement Agreement since November 1998.
5. Defendant Lorillard Tobacco Company is a Delaware corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since November 1998.
6. Defendant Commonwealth Brands, Inc., is a Kentucky corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since November 1998.
7. Defendant Japan Tobacco International U.S.A., Inc., is a California corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since February 1999.
8. Defendant King Maker Marketing, Inc., is a New York corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since February 1999.
9. Defendant Kretek International, Inc., is a California corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since July 2001.

10. Defendant Liberty Brands, LLC, is a Delaware limited liability company. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since November 2002.

11. Defendant Liggett Group, Inc., is a Delaware corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since November 1998.

12. Defendant Sherman's 1400 Broadway NYC Inc. is a New York corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since February 1999.

13. Defendant Top Tobacco, L.P., with offices at 2301 Ravine Way, Glenview, IL 60025, is a cigarette manufacturer and has been a party to the Master Settlement Agreement since February 1999.

14. Defendant Vibo Corporation d/b/a General Tobacco is a Florida corporation. It is a cigarette manufacturer and has been a party to the Master Settlement Agreement since August 2004.

#### **THE MASTER SETTLEMENT AGREEMENT**

15. In November 1998, the District, 46 states, and five United States territories ("Settling States") entered into the Master Settlement Agreement with the four major United States cigarette manufacturers: Defendant Philip Morris USA, Inc., Defendant R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (prior to its merger with R.J. Reynolds Tobacco Company), and Defendant Lorillard Tobacco Company ("Original Participating Manufacturers"). In return for the Settling States agreeing to release various claims relating to the marketing of cigarettes, the cigarette

manufacturers agreed, among other things, (1) to adhere to numerous restrictions on the ways they may advertise and market cigarettes; and (2) to make payments to the Settling States by April 15 of each year (“April 15 payments”), in perpetuity, based on the cigarette manufacturers’ sales of cigarettes in the United States during the preceding year.

16. The Master Settlement Agreement allows other cigarette manufacturers to join the Agreement, and more than three dozen manufacturers have done so. These manufacturers (“Subsequent Participating Manufacturers”) have agreed, among other things, to adhere to the same advertising and marketing restrictions as the Original Participating Manufacturers and to make April 15 payments, in perpetuity, based on the Subsequent Participating Manufacturers’ sales of cigarettes in the United States during the preceding year. The Master Settlement Agreement generally provides that, “within a reasonable period after signing the Agreement,” a Subsequent Participating Manufacturer is required to make “any payments (including interest thereon at the Prime Rate) that it would have been obligated to make [since November 23, 1998] had it been a signatory as of [that date].” [Master Settlement Agreement § II(jj)]

17. Under the Master Settlement Agreement, the amounts of the cigarette manufacturers’ April 15 payments, as well as the allocation of those payments to the Settling States, depend on complex calculations to be performed by an independent auditor, applying one set of formulas to calculate the April 15 payments due from the Original Participating Manufacturers and another set of formulas to calculate the April 15 payments due from the Subsequent Participating Manufacturers.

18. According to the Master Settlement Agreement formulas, each Settling State’s share of the Defendants’ April 15 payments arising from their cigarette sales in 2003 also

depends on whether the Settling State (1) “continuously had a Qualifying Statute,” as defined by the Master Settlement Agreement (“Qualifying Statute”), “in full force and effect during the entire calendar year” 2003, and (2) “diligently enforced the provisions” of its Qualifying Statute “during such entire calendar year.”

19. If, during the entire year 2003, the District and all the other Settling States had “in full force and effect” and “diligently enforced” such Qualifying Statutes, then the Master Settlement Agreement formulas would (1) require the Defendants to make greater April 15 payments for their cigarette sales in 2003 than if, during any part of 2003, one or more of the Settling States did not have Qualifying Statutes in full force and effect, or did not diligently enforce their Qualifying Statutes; and (2) allocate to the District a 0.6071183% share of these April 15 payments, resulting in the District receiving more than \$37 million based on the Defendants’ cigarette sales in 2003.

20. If, during any part of 2003, the District did not have a Qualifying Statute in full force and effect, or did not diligently enforce its Qualifying Statute, then the Master Settlement Agreement formulas would provide for the District’s share of the Defendants’ settlement payments to be about \$7 million or more lower than if, during all of 2003, the District had in full force and effect and diligently enforced a Qualifying Statute. The amount of any such downward adjustment to the District’s share of the Defendants’ settlement payments would depend on which other Settling States, if any, did not have Qualifying Statutes in full force and effect, or did not diligently enforce their Qualifying Statutes, during any part of 2003.

21. If, during all of 2003, the District had a Qualifying Statute in full force and effect and diligently enforced its Qualifying Statute, then the determination under the Master

Settlement Agreement formulas of the amount that the District is to receive for the Defendants' sales of cigarettes in 2003 would not depend on which other Settling States, if any, did not have Qualifying Statutes in full force and effect, or did not diligently enforce their Qualifying Statutes, during any part of 2003.

### **THE DISTRICT'S QUALIFYING STATUTE**

22. The Master Settlement Agreement provides that a statute "in the form set forth in Exhibit T [to the Master Settlement Agreement] . . . if enacted without modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal, shall constitute a Qualifying Statute." [Master Settlement Agreement § IX(d)(2)(E)].

23. During the entire calendar year 2003, the District continuously had, in full force and effect, a statute that conformed to Exhibit T to the Master Settlement Agreement and was, therefore, a Qualifying Statute under the Master Settlement Agreement. This statute, the Tobacco Settlement Model Act of 2000, has been codified at D.C. Code §§ 7-1801.01 & 7-1801.02 (2001).

24. The District's Qualifying Statute, in conformity with Exhibit T to the Master Settlement Agreement, requires that any cigarette manufacturer "selling cigarettes to consumers within the District of Columbia (whether directly or through a distributor, retailer, or similar intermediary or intermediaries)" *either* (1) join and "generally perform its financial obligations under the Master Settlement Agreement"; or (2) maintain a "qualified escrow fund" (as defined by D.C. Code § 7-1801.01(6) (2001)) into which the manufacturer places funds by April 15 of each year based on the manufacturer's cigarette sales to consumers within the District of Columbia during the preceding calendar year.



## THE DISTRICT'S DILIGENT ENFORCEMENT

25. The District diligently enforced its Qualifying Statute during the entire calendar year 2003.

26. By mid-2003, the District achieved a rate of compliance with its Qualifying Statute of greater than 98 percent, as measured by cigarette manufacturers having *either* incurred Master Settlement Agreement payment obligations or complied with Qualifying Statute escrow obligations, arising from sales of their cigarettes to consumers in the District of Columbia during calendar year 2002. Moreover, the District's enforcement-related work during 2003 contributed to a Qualifying Statute compliance rate, by mid-2004, of greater than 99 percent, as measured by cigarette manufacturers having *either* incurred Master Settlement Agreement payment obligations or complied with Qualifying Statute escrow obligations, arising from sales of their cigarettes to consumers in the District of Columbia during calendar year 2002.

27. The actions that the District took during 2003 to enforce its Qualifying Statute included, but were not limited to, the following:

(1) Prior to April 15, 2003, the District notified cigarette manufacturers that had not joined the Master Settlement Agreement of their obligation (i) to escrow funds based on sales of their cigarettes in the District of Columbia during 2002, and (ii) to certify annually as to their compliance with the escrow requirement;

(2) At all times during 2003, the District required each of its licensed cigarette wholesalers to report monthly, for cigarettes manufactured by companies that had not joined the Master Settlement Agreement, how many of each manufacturer's cigarettes the wholesaler sold during the preceding month, as measured by the number of packs to

which the wholesaler affixed the District's excise tax stamp. In 2004 the District relied on wholesaler reports from 2003 in preparing and filing a court action to enforce the District's Qualifying Statute. *District of Columbia v. KT&G Corp.*, Civ. No. 04-5998 (D.C. Super. Ct.) (complaint filed Aug. 4, 2004; case settled April 13, 2006);

(3) In March 2003, the District contacted a foreign cigarette manufacturer regarding its failure to escrow funds by April 15, 2001 for sales of its cigarettes in the District of Columbia during 2000. In response, the manufacturer escrowed additional funds in April 2003 for sales of its cigarettes in the District of Columbia during 2000;

(4) In June 2003, the District entered into a settlement agreement with a domestic cigarette manufacturer, pursuant to which the manufacturer escrowed additional funds for sales of its cigarettes in the District of Columbia during 2001 and 2002; and

(5) In late 2003, the District's Legislative and Executive branches worked on legislation to facilitate enforcement of the District's Qualifying Statute, especially as to cigarette manufacturers that were located in other countries and had not joined the Master Settlement Agreement. This legislative effort led to enactment of the Tobacco Product Manufacturer Reserve Fund Complementary Procedures Act of 2004, which became effective on April 22, 2004. D.C. Code § 7-1803.01 *et seq.* (2005 supp.).

28. The District also enforced its Qualifying Statute through its support of, and cooperation with, enforcement-related work by the National Association of Attorneys General during 2003. This work included arranging for cigarette manufacturers to become Subsequent Participating Manufacturers and seeking to ensure that Original Participating Manufacturers and Subsequent Participating Manufacturers generally performed their financial obligations under the Agreement. Among other things, this

work resulted in the following cigarette manufacturers joining the Master Settlement Agreement during 2003: International Tobacco Group (Las Vegas), Inc. (in April 2003); Bekenton, S.A. (in June 2003); Canary Islands Cigar Co. (in September 2003); Anderson Tobacco Company, LLC (in November 2003); and Farmer's Tobacco Co. of Cynthiana, Inc. (in December 2003).

### **DISPUTE WITH CIGARETTE MANUFACTURERS**

29. None of the Settling States have asserted, either expressly or by implication, that the District or any other Settling State has not, during the entire year 2003, continuously had a Qualifying Statute in full force and effect and diligently enforced its Qualifying Statute. On March 2, 2006, the District notified all the parties to the Master Settlement Agreement that the District intended, if necessary, to file an action in this Court, against cigarette manufacturers that are parties to the Master Settlement Agreement, to seek declaratory relief establishing that the District, during the entire year 2003, diligently enforced the Tobacco Settlement Model Act of 2000.

30. Since March 2, 2006, all of the Defendants have asserted, in written dispute notices, that the April 15 payments arising from Defendants' sales of cigarettes during 2003 are subject to certain downward adjustments under the Master Settlement Agreement. Such downward adjustments would not apply if, during the entire year 2003, all of the Settling States, including the District, continuously had Qualifying Statutes in full force and effect and diligently enforced their Qualifying Statutes.

31. Based on the downward adjustments that they contend should be applied to the April 15 payments arising from their sales of cigarettes during 2003, Defendants R.J. Reynolds Tobacco Company, Lorillard Tobacco Company, and Kretek International,

Inc., have paid substantial amounts of their settlement payments into an escrow account for disputed payments. Under the Master Settlement Agreement formulas, the District's share of these disputed amounts is about \$4.6 million.

32. An actual controversy has arisen and now exists between the Defendants and the District over whether, during the entire calendar year 2003, the District continuously had a Qualifying Statute in full force and effect and diligently enforced its Qualifying Statute.

### **PRAYER FOR RELIEF**

Wherefore, the District requests that this Court:

1. Enter a declaratory Order determining that, during the entire calendar year 2003, the District continuously had a Qualifying Statute in full force and effect and diligently enforced its Qualifying Statute;
2. Enter one or more enforcement Orders, if necessary, to compel the Defendants to comply with any Master Settlement Agreement payment obligations arising from the Court's diligent-enforcement determination;
3. Award the District the costs it reasonably incurs in this action; and
4. Grant the District such other relief as the Court deems just and proper.

Respectfully submitted,

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Dated: April \_\_\_\_, 2006